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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 TERESA A. AVILEZ,) Case No. EDCV 14-0732-JPR
11 Plaintiff,)
12 vs.) MEMORANDUM OPINION AND ORDER
13) AFFIRMING COMMISSIONER
14 CAROLYN W. COLVIN,)
15 Acting Commissioner of)
16 Social Security,)
17 Defendant.)
18

17 I. PROCEEDINGS

18 Plaintiff seeks review of the Commissioner's final decision
19 denying her applications for Social Security disability insurance
20 benefits ("DIB") and supplemental security income benefits
21 ("SSI"). This matter is before the Court on the parties' Joint
22 Stipulation, filed January 9, 2015, which the Court has taken
23 under submission without oral argument. For the reasons stated
24 below, the Commissioner's decision is affirmed.

25 II. BACKGROUND

26 Plaintiff was born on December 11, 1961. (Administrative
27 Record ("AR") 24, 215.) She completed eighth grade (AR 24, 245)
28 and worked as a stock clerk, child monitor, and customer-service

1 agent (AR 96, 246). On April 6, 2011, Plaintiff filed
2 applications for DIB and SSI, alleging that she had been unable
3 to work since July 31, 2009, because of a herniated disc. (AR
4 215-26, 245.) After Plaintiff's applications were denied
5 initially and on reconsideration, she requested a hearing before
6 an Administrative Law Judge. (AR 199-201.)

7 A hearing was held on October 24, 2012, at which Plaintiff
8 appeared and was represented by counsel. (See AR 63.) Plaintiff
9 testified, as did both a medical expert and a vocational expert.
10 (See AR 64.) In a written decision issued November 14, 2012, the
11 ALJ determined that Plaintiff was not disabled. (AR 13-26.)

12 On January 11, 2013, Plaintiff requested review by the
13 Appeals Council. (AR 7-8; see also AR 279-82 (letter brief).)
14 On February 21, 2014, the Appeals Council denied Plaintiff's
15 request for review. (AR 1-3.) This action followed.

16 **III. STANDARD OF REVIEW**

17 Under 42 U.S.C. § 405(g), a district court may review the
18 Commissioner's decision to deny benefits. The ALJ's findings and
19 decision should be upheld if they are free of legal error and
20 supported by substantial evidence based on the record as a whole.
21 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
22 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
23 evidence means such evidence as a reasonable person might accept
24 as adequate to support a conclusion. Richardson, 402 U.S. at
25 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
26 It is more than a scintilla but less than a preponderance.
27 Lingenfelter, 504 F.3d at 1035. To determine whether substantial
28 evidence supports a finding, the reviewing court "must review the

1 administrative record as a whole, weighing both the evidence that
2 supports and the evidence that detracts from the Commissioner's
3 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
4 1996). "If the evidence can reasonably support either affirming
5 or reversing," the reviewing court "may not substitute its
6 judgment" for that of the Commissioner. Id. at 720-21.

7 **IV. THE EVALUATION OF DISABILITY**

8 People are "disabled" for purposes of receiving Social
9 Security benefits if they are unable to engage in any substantial
10 gainful activity owing to a physical or mental impairment that is
11 expected to result in death or has lasted, or is expected to
12 last, for a continuous period of at least 12 months.
13 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
14 (9th Cir. 1992).

15 A. The Five-Step Evaluation Process

16 The ALJ follows a five-step sequential evaluation process in
17 assessing whether a claimant is disabled. 20 C.F.R.
18 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
19 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
20 step, the Commissioner must determine whether the claimant is
21 currently engaged in substantial gainful activity; if so, the
22 claimant is not disabled and the claim must be denied.
23 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

24 If the claimant is not engaged in substantial gainful
25 activity, the second step requires the Commissioner to determine
26 whether the claimant has a "severe" impairment or combination of
27 impairments significantly limiting her ability to do basic work
28 activities; if not, a finding of not disabled is made and the

1 claim must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

2 If the claimant has a "severe" impairment or combination of
3 impairments, the third step requires the Commissioner to
4 determine whether the impairment or combination of impairments
5 meets or equals an impairment in the Listing of Impairments
6 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix
7 1; if so, disability is conclusively presumed and benefits are
8 awarded. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

9 If the claimant's impairment or combination of impairments
10 does not meet or equal an impairment in the Listing, the fourth
11 step requires the Commissioner to determine whether the claimant
12 has sufficient residual functional capacity ("RFC")¹ to perform
13 her past work; if so, the claimant is not disabled and the claim
14 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The
15 claimant has the burden of proving she is unable to perform past
16 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets
17 that burden, a prima facie case of disability is established.
18 Id.

19 If that happens or if the claimant has no past relevant
20 work, the Commissioner then bears the burden of establishing that
21 the claimant is not disabled because she can perform other
22 substantial gainful work available in the national economy.
23 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination
24 comprises the fifth and final step in the sequential analysis.
25 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966

27 ¹ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 F.2d at 1257.

2 B. The ALJ's Application of the Five-Step Process

3 At step one, the ALJ found that Plaintiff had not engaged in
4 any substantial gainful activity since July 20, 2009, her alleged
5 onset date. (AR 15.) At step two, she found that Plaintiff had
6 the severe impairments of "lumbo sacral degenerative disc
7 disease, osteitis condensans ilii bilateral, [and] left shoulder
8 tendonitis and impingement."² (AR 16) At step three, the ALJ
9 determined that Plaintiff's impairments did not meet or equal any
10 of the impairments in the Listing. (Id.) At step four, she
11 found that Plaintiff had the RFC to perform light work with
12 additional limitations:

13 [S]he can lift and/or carry 10 pounds frequently and 20
14 pounds occasionally; she can stand and/or walk two hours
15 out of an eight-hour workday and sit six hours out of an
16 eight-hour workday with the ability to stand and stretch
17 every hour, estimated to take one to three minutes per
18 hour; she can occasionally bend, kneel, stoop, crouch,
19 and crawl; she can occasionally climb stairs, but she
20 cannot climb ladders, work at heights, or balance; and
21 she can occasionally work above shoulder level on the
22 left side with no limitations on the right.

23 (Id.) Based on the VE's testimony, the ALJ concluded that
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25 ² Osteitis condensans ilii is increased density in the
26 iliac bone of the pelvis. See Osteitis condensans ilii,
27 [http://riversideonline.com/health_reference/questions-answers/
an00316.cfm](http://riversideonline.com/health_reference/questions-answers/an00316.cfm) (last updated May 15, 2006). The condition generally
28 causes no signs or symptoms but can cause low-back pain. Id.; (see
also AR 78).

1 Plaintiff was unable to perform her past relevant work. (AR 24.)
2 The ALJ found, however, that Plaintiff could perform jobs that
3 existed in significant numbers in the national economy. (AR 25.)
4 Accordingly, she found Plaintiff not disabled. (AR 26.)

5 **V. DISCUSSION**

6 Plaintiff claims that the ALJ erred in (1) finding her
7 capable of light work despite her stand/walk limitation and
8 stretching requirement and (2) finding her capable of the jobs
9 identified by the VE despite her left-shoulder limitation. (See
10 J. Stip. at 4.) Because the ALJ's determinations were supported
11 by substantial evidence, remand is not warranted.

12 A. The ALJ Did Not Err in Finding Plaintiff Capable of
13 Light Work

14 Plaintiff contends that the ALJ erred in finding her capable
15 of light work given that Plaintiff's RFC limited her to only two
16 hours of standing or walking in an eight-hour workday and
17 required that she be permitted to stand and stretch hourly. (J.
18 Stip. at 5-9, 13-15.)

19 1. Applicable law

20 A district court must uphold an ALJ's RFC assessment when
21 the ALJ has applied the proper legal standard and substantial
22 evidence in the record as a whole supports the decision. Bayliss
23 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must
24 consider all the medical evidence in the record and "explain in
25 [her] decision the weight given to . . . [the] opinions from
26 treating sources, nontreating sources, and other nonexamining
27 sources." §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii); see also
28 §§ 404.1545(a)(1) ("We will assess your residual functional

1 capacity based on all the relevant evidence in your case
2 record."), 416.945(a)(1) (same); SSR 96-8p, 1996 WL 374184, at *2
3 (July 2, 1996) (RFC is assessed "based on all of the relevant
4 evidence in the case record"). In making an RFC determination,
5 the ALJ may consider those limitations for which there is support
6 in the record and need not consider properly rejected evidence or
7 subjective complaints. See Bayliss, 427 F.3d at 1217 (upholding
8 ALJ's RFC determination because "the ALJ took into account those
9 limitations for which there was record support that did not
10 depend on [claimant's] subjective complaints"); Batson v. Comm'r
11 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
12 required to incorporate into RFC any findings from treating-
13 physician opinions that were "permissibly discounted"). The
14 Court must consider the ALJ's decision in the context of "the
15 entire record as a whole," and if the "evidence is susceptible to
16 more than one rational interpretation, the ALJ's decision should
17 be upheld." Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
18 (9th Cir. 2008) (internal quotation marks omitted).

19 2. Analysis

20 Plaintiff contends that in finding her capable of light
21 work, the ALJ failed to give adequate reasons for discounting the
22 opinions of the state-agency doctors, who found Plaintiff capable
23 of sedentary work.³ (J. Stip. at 7; see AR 112, 157, 376.)

24 Three types of physicians may offer opinions in Social
25 Security cases: (1) those who directly treated the plaintiff, (2)
26 those who examined but did not treat the plaintiff, and (3) those

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28 ³ Plaintiff does not challenge the ALJ's assessment of the
other medical opinions of record.

1 who did neither. Lester, 81 F.3d at 830. A treating physician's
2 opinion is generally entitled to more weight than that of an
3 examining physician, and an examining physician's opinion is
4 generally entitled to more weight than that of a nonexamining
5 physician. Id. Generally, the weight given a physician's
6 opinion is determined by length of the treatment relationship,
7 frequency of examination, nature and extent of the treatment
8 relationship, amount of evidence supporting the opinion,
9 consistency with the record as a whole, the doctor's area of
10 specialization, and other factors. §§ 404.1527(c)(2)-(6),
11 416.927(c)(2)-(6).

12 On July 28, 2011, state-agency physician J. Hartman opined
13 that Plaintiff could lift 20 pounds occasionally and 10 pounds
14 frequently, walk or stand for four hours and sit for six hours in
15 an eight-hour workday, and do postural and agility activities
16 only occasionally. (AR 376.) The same day, Dr. Hartman's
17 opinion was incorporated into a Disability Determination
18 Explanation (see AR 106-07), in which state-agency physician
19 Leonard Naiman opined that Plaintiff could lift 20 pounds
20 occasionally and 10 pounds frequently; stand or walk for four
21 hours and sit for six hours in an eight-hour day; perform limited
22 pushing and pulling activities with her lower extremities;
23 occasionally climb stairs, balance, stoop, kneel, crouch, and
24 crawl; never climb ladders, ropes, or scaffolds; and have limited
25 exposure to hazards (AR 108-10). On December 7, 2011, state-
26 agency physician N.J. Rubaum affirmed this RFC determination upon
27 reconsideration. (AR 153-55.) Drs. Naiman and Rubaum indicated
28 that Plaintiff could perform sedentary work, based on the

1 Medical-Vocational Guidelines (the "Grids"). (AR 112, 157);
2 see 20 C.F.R. pt. 404, subpt. P, app. 2 § 201.21. The Case
3 Analysis prepared by Dr. Hartman and a state-agency employee
4 identified as TAWOOD includes the latter's notation that "[b]ased
5 on longitudinal evidence and [consultative examination],
6 [claimant] can still do a [sedentary] job with limitations." (AR
7 376.) The Commissioner argues that this statement should not be
8 attributed to Dr. Hartman (J. Stip. at 9-10), but he signed the
9 form without any contrary indication, suggesting agreement.
10 Thus, all three state-agency doctors recognized Plaintiff's
11 ability to perform sedentary work.

12 As an initial matter, the RFC determined by the ALJ was
13 largely consistent with those provided by the state-agency
14 doctors. (See AR 22-23 (giving Dr. Hartman's opinion
15 "substantial weight").)⁴ To the extent the ALJ's RFC
16 determination diverged from those of the state-agency doctors, it
17 did so in Plaintiff's favor, adopting more severe restrictions:
18 only two hours of standing or walking in an eight-hour day
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20 ⁴ The ALJ did not indicate the weight afforded the
21 disability determinations provided by Drs. Naiman and Rubaum. See
22 §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii) (unless controlling weight
23 is given to opinion of treating source, ALJ will explain weight
24 given opinions of state-agency doctors). Because these state-
25 agency physicians found essentially the same limitations as
26 Dr. Hartman, based in large part upon his findings (see AR 106-07,
27 110, 152), any error in failing to specify the weight afforded
28 their opinions was harmless. See Carmickle v. Comm'r Soc. Sec.
Admin., 533 F.3d 1155, 1162 (9th Cir. 2008) (holding that ALJ's
error is harmless as long as substantial evidence supports ultimate
conclusion); cf. Rogal v. Colvin, 590 F. App'x 667, 670-71 (9th
Cir. 2014) (finding failure to specify weight afforded doctor's
opinion harmless when "significant weight" was given to opinion of
second doctor who relied on first doctor's opinion).

1 instead of four; an hourly stretching requirement; no balancing;
2 and only occasional work above shoulder level on the left side.
3 (Compare AR 16 with AR 108-09, 154.) Moreover, to the extent
4 comparison is possible, the RFC formulated by the ALJ is at least
5 as restrictive as the RFCs recommended by other doctors whose
6 opinions are reflected in the record. (See AR 77 (on Oct. 24,
7 2012, medical expert Dr. Samuel Landau opining that Plaintiff
8 should be limited to two hours standing and walking and be
9 permitted to stretch for one to three minutes each hour; should
10 lift no more than 20 pounds occasionally and 10 pounds
11 frequently; should stoop and bend only occasionally; should avoid
12 ladders, heights, and balancing; and should only occasionally
13 work above shoulder level on the left side), 519-20 (on July 8,
14 2011, treating orthopedist Kambiz Hannani opining that Plaintiff
15 should lift only 20 pounds occasionally and 10 pounds frequently
16 and be precluded from frequent bending).)⁵

17 Plaintiff contends, however, that the ALJ erred in failing
18 to restrict her to sedentary work, as indicated by the state-
19 agency doctors, or provide a reason for not doing so. (J. Stip.
20 at 7; AR 112, 157.) As an initial matter, the ALJ's finding that
21 Plaintiff could perform a limited range of light work was
22 _____

23 ⁵ Because treating neurologist Jose Rodriguez couched his
24 opinion that Plaintiff could not work (at least, absent "severe
25 restrictions") in terms of her employment in a warehouse, where she
26 did "a lot of lifting" (AR 290, 293, 298), his opinion gives no
27 indication whether he considered Plaintiff capable of a restricted
28 range of light work. Similarly, on February 8, 2011, examining
orthopedist Ralph Steiger found Plaintiff temporarily totally
disabled, indicating that she was unable to return to her existing
employment, but his opinions do not indicate whether he considered
her capable of less taxing work. (AR 569; see also AR 553.)

1 supported by the opinion of consulting examiner orthopedist
2 Robert MacArthur, who found the same thing (AR 373) and whose
3 opinion the ALJ gave "significant weight" (AR 22). Further, the
4 state-agency doctors' indications that Plaintiff was restricted
5 to sedentary work was not a medical finding but merely reflected
6 the doctors' application of the Grids to Plaintiff's physical
7 limitations. The ALJ was permitted to and did consult a VE to
8 determine what light-work jobs available in significant numbers
9 in the economy would accommodate Plaintiff's additional
10 limitations. See SSR 83-12, 1983 WL 31253, at *2 (Jan. 1, 1983)
11 (noting that when individual's exertional RFC does not coincide
12 with any of defined ranges of work but instead includes
13 "considerably greater restriction(s)," VE testimony can clarify
14 extent of erosion of occupational base); Moore v. Apfel, 216 F.3d
15 864, 870 (9th Cir. 2000) ("SSR 83-12 directs that when a claimant
16 falls between two grids, consultation with a VE is
17 appropriate."); Thomas v. Barnhart, 278 F.3d 947, 960 (9th Cir.
18 2002) (same).

19 The ALJ presented a hypothetical to the VE that encompassed
20 all of Plaintiff's physical limitations – which Plaintiff does
21 not challenge – including her ability to stand and/or walk for no
22 more than two hours in an eight-hour workday, her requirement of
23 hourly stretching, and her limitation to only occasional above-
24 shoulder work with her left arm. (AR 96.) The ALJ advised the
25 VE to "[p]lease testify according to the Dictionary of
26 Occupational Titles or explain why you are not testifying
27 according to the Dictionary of Occupational Titles and state what
28 your testimony is based upon." (AR 95.) The VE testified that a

1 person with Plaintiff's limitations could perform the jobs of
2 cashier II and information clerk. (AR 97.) The VE also eroded
3 the number of jobs available regionally and in the national
4 economy by 50 percent to reflect Plaintiff's limitations. (Id.)⁶

5 Because the hypothetical presented to the VE included all of
6 Plaintiff's limitations that were supported by the record, a fact
7 Plaintiff does not challenge, the ALJ was entitled to rely on the
8 VE's testimony. See Thomas, 278 F.3d at 956 (finding VE
9 testimony reliable when hypothetical posed included all of
10 claimant's functional limitations); see also Bayliss, 427 F.3d at
11 1218 ("A VE's recognized expertise provides the necessary
12 foundation for his or her testimony."). Moreover, the VE
13 provided a "significant reduction" in the job numbers to account
14 for Plaintiff's limitations and the extent to which the VE's
15 findings deviated from the DOT. (See J. Stip. at 8 (Plaintiff
16 asserting VE's testimony deviated from DOT), 9 (Plaintiff arguing
17 that limitations would require "significant reduction" in job
18 numbers)); Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995)
19 (noting that "an ALJ may rely on expert testimony which
20 contradicts the DOT" as long as "the record contains persuasive
21 evidence to support the deviation"); Hawley v. Colvin, No. EDCV
22 13-00769 AN, 2014 WL 1276194, at *3 (C.D. Cal. Mar. 27, 2014)
23 (finding that VE's express recognition of erosion of available
24 jobs provided sufficient rationale to support deviation from
25

26
27 ⁶ The VE's erosion of the available jobs left 4,300
28 cashier-II jobs regionally and 37,750 nationally and 2,350
information-clerk jobs regionally and 31,350 nationally. (AR 97.)

1 DOT); Palacios v. Astrue, No. EDCV 10-1743 AJW, 2012 WL 601874,
2 at *11 (C.D. Cal. Feb. 23, 2012) (same).

3 Plaintiff contends that because the ALJ found her capable of
4 standing or walking only two hours in an eight-hour day, and
5 because light work in most cases requires approximately six hours
6 of standing or walking, the ALJ's finding that she was capable of
7 light work "violates agency policy." (J. Stip. at 6-7
8 (citing SSR 83-10, 1983 WL 31251, at *6 (Jan. 1, 1983) (noting
9 that "the full range of light work requires standing or walking,
10 off and on, for a total of approximately 6 hours of an 8-hour
11 workday"))). But the Social Security "regulations, themselves,
12 provide that the DOT classifications are rebuttable" and
13 "recognize vocational experts and several published sources other
14 than the DOT as authoritative." Johnson, 60 F.3d at 1435-36
15 (citing § 404.1566(d)(2)-(5), (e)). Although most light work
16 requires more standing and walking than the ALJ found Plaintiff
17 able to perform, some light-work positions require no more than
18 two hours of standing and walking. See Ortiz v. Colvin, No. ED
19 CV 14-61-AS, 2014 WL 7149544, at *4 (C.D. Cal. Dec. 15, 2014);
20 Taylor v. Astrue, No. CV 10-03328-JEM, 2011 WL 976777, at *4-5
21 (C.D. Cal. Mar. 18, 2011); see also Rosales v. Colvin, No. SACV
22 12-753-AGR, 2013 WL 6152861, at *13 (C.D. Cal. Nov. 22, 2013)
23 (rejecting argument that sit/stand option precludes finding of
24 light work).⁷ Plaintiff does not dispute that the VE identified
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26 ⁷ Pierce v. Astrue, 382 F. App'x 618 (9th Cir. 2010), upon
27 which Plaintiff relies (J. Stip. at 9), is inapposite. Unlike the
28 ALJ in this case, the ALJ in Pierce improperly rejected a doctor's
finding that the claimant was capable of only two hours of standing
or walking. 382 F. App'x at 619-20. The court did not consider

1 jobs that would accommodate her stand/walk restriction. (J.
2 Stip. at 5 (noting that VE "identified positions that would be
3 performed in a seated position").)

4 Remand is not warranted on this basis.

5 B. The ALJ Did Not Err in Finding that Plaintiff Could
6 Perform Jobs Requiring Frequent Reaching

7 Plaintiff further contends that because her RFC provided
8 that she could perform only "occasional[]" work above shoulder
9 level on the left side," the positions identified by the VE,
10 which require "frequent reaching," were inconsistent with the
11 demands of her RFC.⁸ (J. Stip. at 16; see AR 16, 25, 96); DOT
12 211.462-010 (cashier II), available at 1991 WL 671840; DOT
13 237.367-018 (information clerk), available at 1991 WL 672187.
14 Plaintiff asserts that because reaching is defined in the DOT as
15 "extending the hands and arms in any direction," SSR 85-15, 1985
16 WL 56857, at *7 (Jan. 1, 1985), it necessarily includes reaching
17 above shoulder level.

18 As an initial matter, the RFC determined by the ALJ did not
19 restrict Plaintiff's "reaching" but rather limited her to only
20 "occasional[]" work above shoulder level on the left side."⁹ (AR
21 16; see AR 96.) "Work" and "reaching" are not necessarily the
22 same thing. Viewed in the context of the evidence as a whole,
23

24 whether such a limitation would permit light work.

25 ⁸ As defined by the Social Security Administration,
26 occasional means "occurring from very little up to one-third of the
27 time." SSR 83-10, 1983 WL 31251, at *5 (Jan. 1, 1983). Frequent
28 means from one-third to two-thirds of the time. Id. at *6.

⁹ Plaintiff does not challenge the ALJ's RFC finding with
respect to her shoulder.

1 see Ryan, 528 F.3d at 1198, the ALJ most reasonably intended to
2 preclude Plaintiff from doing jobs that regularly required
3 lifting items or performing maneuvers on a sustained basis above
4 her left shoulder, not from ever reaching in an upward direction
5 with her left arm (see AR 92-93 (Plaintiff testifying that for
6 "four and a half/five months" of every six, her left-shoulder
7 pain was alleviated by "shots"); AR 75, 77 (at hearing, Dr.
8 Landau noting evidence of left-shoulder tendonitis impingement
9 and recommending only occasional above-shoulder "work" on that
10 side); AR 371-73 (on July 12, 2011, Dr. MacArthur noting
11 "moderate impingement" but no resulting limitation); AR 390, 398
12 (on July 8, 2011, Dr. Hannani noting left-shoulder impingement
13 but only slight limitation in range of motion and recommending no
14 limitation on above-shoulder work); AR 565, 569 (on Feb. 8, 2011,
15 Dr. Ralph Steiger finding reduced range of motion but no
16 impingement and diagnosing tendinitis and possible rotator-cuff
17 tear); AR 472 (on Jan. 20, 2007, imaging of left shoulder showed
18 "small amount of soft tissue calcification . . . consistent with
19 tendinitis" but "[n]o additional abnormality"))).

20 Moreover, although the DOT is silent on just how much of the
21 "reaching" required by the cashier-II and information-clerk jobs
22 would require the use of both arms above shoulder level,
23 presumably it is some smaller subset of "frequent." Indeed, of
24 the tasks indicated in each position's DOT description, it's not
25 evident that either involves above-shoulder reaching. See DOT
26 211.462-010 (describing cashier II's tasks as receiving,
27 calculating, and recording cash payments; making change, cashing
28 checks, and issuing receipts or tickets; preparing reports of

1 transactions; possibly operating ticket-dispensing machine or
2 cash register with peripheral electronic data-processing
3 equipment; selling sundries; and pressing numeric keys of
4 computer corresponding to gasoline pump), available at 1991 WL
5 671840; DOT 237.367-018 (describing information clerk's tasks as
6 providing train- or bus-travel information, including timetables
7 and travel literature, and computing trip rates and discounts),
8 available at 1991 WL 672187. These descriptions are not,
9 therefore, inconsistent on their face with the ALJ's RFC finding.
10 Cf. Huerta v. Astrue, No. EDCV 11-1868-MLG, 2012 WL 2865898, at
11 *2 (C.D. Cal. July 12, 2012) (absent indication that tasks
12 identified in DOT could not be performed sitting down or while
13 maintaining comfortable head position, DOT description was not
14 inconsistent with RFC, which permitted "some mobility" and
15 required only that claimant be able to switch neck positions
16 every 15 to 30 minutes).

17 As noted above, the ALJ presented a hypothetical to the VE
18 that included all of Plaintiff's physical limitations, including
19 her limitation to only occasional above-shoulder work with her
20 left arm. (AR 96.) She specifically instructed the VE to
21 indicate if any of his testimony deviated from the DOT. (AR 95.)
22 The VE testified that a person with Plaintiff's limitations could
23 perform the jobs of cashier II and information clerk. (AR 97.)
24 And although Plaintiff's counsel questioned the VE and challenged
25 his finding that Plaintiff could perform those positions, counsel
26 did not raise the issue of Plaintiff's left-shoulder limitation.
27 (See AR 98-101); cf. Solorzano v. Astrue, No. ED CV 11-369-PJW,
28 2012 WL 84527, at *6 (C.D. Cal. Jan. 20, 2012) (noting counsel's


1 duty to raise conflict with DOT at hearing). The ALJ was
2 therefore entitled to rely on the VE's informed, specific, and
3 uncontradicted explanation. See Bayliss, 427 F.3d at 1218.

4 Remand is not warranted on this basis.

5 **VI. CONCLUSION**

6 Consistent with the foregoing, and pursuant to sentence four
7 of 42 U.S.C. § 405(g),¹⁰ IT IS ORDERED that judgment be entered
8 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
9 request for remand, and DISMISSING this action with prejudice.
10 IT IS FURTHER ORDERED that the Clerk serve copies of this Order
11 and the Judgment on counsel for both parties.

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14 DATED: April 30, 2015



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ¹⁰ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record, a
28 judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."